

Citation Nr: 1215200

Decision Date: 04/26/12

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On appeal from the
Department of Veterans Affairs Regional Office in Phoenix, Arizona

THE ISSUES

1. Whether new and material evidence has been submitted sufficient to reopen a previously denied claim of entitlement to service connection for diabetes mellitus type II, to include as due to Agent Orange exposure and, if so, whether service connection is warranted for the claimed disorder.
2. Whether new and material evidence has been submitted sufficient to reopen a previously denied claim of entitlement to service connection for a liver disorder, including cirrhosis of the liver, to include as due to Agent Orange exposure and/or as secondary to a service-connected disability and, if so, whether service connection is warranted for the claimed disorder.
3. Whether new and material evidence has been submitted sufficient to reopen a previously denied claim of entitlement to service connection for blood clots and/or deep vein thrombosis, to include as due to Agent Orange exposure and/or as secondary to a service-connected disability and, if so, whether service connection is warranted for the claimed disorder.
4. Whether new and material evidence has been submitted sufficient to reopen a previously denied claim of entitlement to service connection for a lung disorder, including asthma, to include as due to Agent Orange exposure and, if so, whether service connection is warranted for the claimed disorder.
5. Whether new and material evidence has been submitted sufficient to reopen a previously denied claim of entitlement to service connection for a brain disorder, including brain hemorrhage, to include as due to Agent Orange exposure and, if so, whether service connection is warranted for the claimed disorder.
6. Entitlement to service connection for peripheral neuropathy of the left upper extremity, to include as due to Agent Orange exposure and/or as secondary to diabetes mellitus type II.
7. Entitlement to service connection for peripheral neuropathy of the right upper extremity, to include as due to Agent Orange exposure and/or as secondary to diabetes mellitus type II.
8. Entitlement to service connection for peripheral neuropathy of the left lower extremity, to include as due to Agent Orange exposure and/or as secondary to diabetes mellitus type II.
9. Entitlement to service connection for peripheral neuropathy of the right lower extremity, to include as due to Agent Orange exposure and/or as secondary to diabetes mellitus type II.
10. Entitlement to service connection for left hip replacement, osteonecrosis, to include as due to Agent Orange exposure.
11. Entitlement to service connection for right hip replacement, osteonecrosis, to include as due to Agent Orange exposure.
12. Entitlement to service connection for prolapsed trachea, to include as due to

Agent Orange exposure.

13. Entitlement to service connection for a thyroid condition, to include as due to Agent Orange exposure.

14. Entitlement to service connection for a dental condition, to include as due to Agent Orange exposure and/or as secondary to diabetes mellitus type II.

REPRESENTATION

Appellant represented by: Disabled American Veterans

WITNESSES AT HEARING ON APPEAL

Appellant and his spouse

ATTORNEY FOR THE BOARD

Christopher Murray, Counsel

INTRODUCTION

Please note this appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c) (2011). 38 U.S.C.A. § 7107(a)(2) (West 2002).

The Veteran had active military service from April 1966 to April 1968.

This case comes before the Board of Veterans' Appeals (Board) on appeal of an August 2006 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO) in Phoenix, Arizona.

The Veteran and his spouse testified before the undersigned Acting Veterans Law Judge at a December 2009 hearing conducted at the RO. A transcript of the hearing is of record.

This case was brought before the Board in July 2010, at which time the claim was remanded to allow the Agency of Original Jurisdiction (AOJ) to further assist the Veteran in the development of his claim. The requested development having been completed, the case is once again before the Board for appellate consideration of the issue on appeal.

The Board also notes that, in December 2011, the Veteran's representative submitted an Informal Hearing Presentation requesting service connection for a heart disability, including coronary artery disease. However, the Board observes this issue has not yet been adjudicated by the RO and, as such, the Board has no jurisdiction over this issue at this time. As such, this issue is REFERRED to the RO for its consideration. See *Godfrey v. Brown*, 7 Vet. App. 398 (1995).

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The issues of entitlement to service connection for a liver disorder, blood clots, including deep vein thrombosis, a lung disorder, a brain disorder, including brain hemorrhage, osteonecrosis of the bilateral hips, prolapsed trachea, thyroid condition and dental condition are addressed in the REMAND portion of the decision below and are REMANDED to the RO via the Appeals Management Center (AMC), in Washington, DC.

FINDINGS OF FACT

1. Resolving all doubt in favor of the Veteran, direct exposure to herbicides, to include Agent Orange, has been established.
2. A December 2003 rating decision denied the Veteran's claims of entitlement to service connection for diabetes mellitus type II, a liver disorder, blood clots, a lung disorder and a brain disorder. The Veteran was notified of his appellate rights, but did not complete an appeal of the rating decision.
3. Evidence received since the December 2003 rating decision is not cumulative of the evidence of record at the time of the December 2003 denial as it relates to an unestablished fact necessary to substantiate the claim of service connection for diabetes mellitus type II, a liver disorder, blood clots and/or deep vein thrombosis, a lung disorder and a brain disorder and raises a reasonable possibility of substantiating the Veteran's claims of service connection.
4. Diabetes mellitus type II has been medically linked to in-service herbicide exposure.
5. Peripheral neuropathy of the bilateral upper and lower extremities is proximately due to diabetes mellitus, type II.

CONCLUSIONS OF LAW

1. The December 2003 rating decision which denied the Veteran's claims of entitlement to service connection for diabetes mellitus type II, a liver disorder, blood clots, a lung disorder and a brain disorder is final. 38 U.S.C.A. § 7105(c) (West 2002).
2. Evidence received since the December 2003 rating decision in connection with the Veteran's claim of entitlement to service connection for diabetes mellitus type II is new and material. 38 U.S.C.A. § 5108 (West 2002); 38 C.F.R. § 3.156 (2011).
3. Evidence received since the December 2003 rating decision in connection with the Veteran's claim of entitlement to service connection for a liver disorder is new and material. 38 U.S.C.A. § 5108 (West 2002); 38 C.F.R. § 3.156 (2011).
4. Evidence received since the December 2003 rating decision in connection with the Veteran's claim of entitlement to service connection for blood clots and/or deep vein thrombosis is new and material. 38 U.S.C.A. § 5108 (West 2002); 38 C.F.R. § 3.156 (2011).
5. Evidence received since the December 2003 rating decision in connection with the Veteran's claim of entitlement to service connection for a lung disorder is new and material. 38 U.S.C.A. § 5108 (West 2002); 38 C.F.R. § 3.156 (2011).
6. Evidence received since the December 2003 rating decision in connection with the Veteran's claim of entitlement to service connection for a brain disorder is new and material. 38 U.S.C.A. § 5108 (West 2002); 38 C.F.R. § 3.156 (2011).
7. Diabetes mellitus was incurred in active service. 38 U.S.C.A. §§ 1110, 1112, 1113, 1116, 5107 (West 2002); 38 C.F.R. §§ 3.102, 3.303, 3.307, 3.309(e), 3.313 (2011).
8. Peripheral neuropathy of the left upper extremity is proximately due to a

service-connected disability. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. § 3.310 (2011).

9. Peripheral neuropathy of the right upper extremity is proximately due to a service-connected disability. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. § 3.310 (2011).

10. Peripheral neuropathy of the left lower extremity is proximately due to a service-connected disability. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. § 3.310 (2011).

11. Peripheral neuropathy of the right lower extremity is proximately due to a service-connected disability. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. § 3.310 (2011).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

Duties to Notify and Assist

with respect to the claims decided below, since the entire benefit sought on appeal has been granted, no purpose would be served by undertaking an analysis of whether there has been compliance with the notice and duty to assist requirements set out at 38 U.S.C.A. §§ 5100, 5102-5103A, 5106, 5107, 5126 (West 2002)). See, e.g., *Bernard v. Brown*, 4 Vet. App. 384 (1993); VAOPGCPREC 16-92, 57 Fed. Reg. 49,747 (1992).

Analysis

Under 38 U.S.C.A. § 7104, Board decisions must be based on the entire record, with consideration of all the evidence. In *Timberlake v. Gober*, 14 Vet. App. 122 (2000), the Court held, in pertinent part, that the law requires only that the Board address its reasons for rejecting evidence favorable to the claimant. The Federal Circuit has also held that the Board must review the entire record, but does not have to discuss each piece of evidence. *Gonzales v. West*, 218 F.3d 1378, 1380-81 (Fed. Cir. 2000).

It is VA's defined and consistently applied policy to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt it is meant that an approximate balance of positive and negative evidence exists which does not satisfactorily prove or disprove the claim. Reasonable doubt is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. See 38 U.S.C.A. § 5107(b); 38 C.F.R. § 3.102 (2011).

I. Herbicide Exposure

Pertinent to the instant appeal, the Veteran seeks to reopen previously disallowed claims of service connection for diabetes mellitus type II, a liver disorder, blood clots and/or deep vein thrombosis, a lung disorder, a brain disorder. He further seeks service connection for peripheral neuropathy of the bilateral upper and lower extremities. As discussed in more detail below, he claims service connection is warranted for these conditions due to in-service herbicide exposure. However, the Veteran's claims were denied based, in whole or part, on the basis that there is no evidence the Veteran was exposed to herbicides, to include Agent Orange, during his period of active service. As such, for the sake of clarity, the Board will initially address whether the Veteran was exposed to herbicides during active service prior to addressing his claims to reopen and entitlement to service connection on the merits.

Initially, the Board observes that, if a veteran was exposed to an herbicide agent

during active service, a number of diseases, including type II diabetes mellitus, shall be service connected if the requirements of 38 C.F.R. § 3.307(a)(6) are met even though there is no record of such disease during service. 38 C.F.R. § 3.309(e) (2011). The Board notes there is a presumption of exposure to herbicides (to include Agent Orange) for all veterans who served in Vietnam during the Vietnam era (the period beginning on January 9, 1962, and ending on May 7, 1975). 38 U.S.C.A. § 1116(f) (west 2002); 38 C.F.R. § 3.307(a)(6)(iii) (2011). However, the Board notes that the Veteran has not asserted, nor does the record suggest, that he served within the Republic of Vietnam. As such, the presumption of herbicide exposure does not apply, and actual, direct exposure to herbicides must be shown. See *Combee v. Brown*, 34 F.3d 1039, 1042 (Fed. Cir. 1994).

The Veteran asserts actual exposure to herbicides while stationed in Guam. Specifically, he notes that, while transporting 55-gallon drums to Anderson Air Force Base (AFB), several barrels of Agent Orange fell onto the road, leading to some leakage of the herbicide. The veteran further stated that he and other service members attempted to clean the spill by sweeping the liquid off of the road with brooms, thereby directly exposing him to herbicides.

In support of his claim, the Veteran has submitted a number of pieces of circumstantial evidence indicating Agent Orange was stored at Anderson AFB. For example, he submitted news articles, statements and pictures from other veterans purportedly depicting barrels of herbicides that were stored in Guam at the time the Veteran served on the island, and a report of the Environmental Protection Agency (EPA). The EPA report listed Anderson AFB as a toxic site with dioxin contaminated soil and ordering the site cleaned.

After reviewing and weighing the evidence of record on the question of whether the Veteran was exposed to herbicides during his period of active service, the Board finds that there is a genuine state of equipoise of the positive and negative evidence. In such a case, the question is to be resolved in the appellant's favor. 38 U.S.C.A. § 5107(b); see also *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990). In this regard, the Board finds it reasonable to accept the sworn testimony of the veteran, which the Board finds credible, in conjunction with the EPA report and statements and from other veterans who served at Anderson AFB around the time the Veteran served, as evidence of direct herbicide exposure.

Therefore, resolving all doubt in favor of the Veteran, for the purpose of the instant claims, the Board accepts that the Veteran was exposed to herbicides during his active service in Guam. The Board will now discuss the Veteran's claims below.

II. New and Material Evidence

The RO previously denied the Veteran's claims of service connection for diabetes mellitus, a liver disorder, blood clots, a lung disorder and a brain disorder in a December 2003 rating decision. The RO considered the Veteran's statements, service treatment records, post-service private and VA treatment records and reports, and a service department report, which indicated the Veteran did not serve within the Republic of Vietnam. The RO determined that service connection for the claimed conditions, in part, was not warranted because the evidence did not indicate the Veteran was exposed to an herbicide agent during his period of active service. The Veteran was notified of this decision and of his procedural and appellate rights by letter in December 2003. He did not complete an appeal of this decision. Thus, it is final. 38 U.S.C.A. § 7105(a); 38 C.F.R. §§ 20.302, 20.1103 (2011).

However, if new and material evidence is presented or secured with respect to a claim which has been disallowed, VA shall reopen the claim and review the former disposition of the claim. *Manio v. Derwinski*, 1 Vet. App. 145 (1991). When determining whether additional evidence is new and material, VA must determine whether such evidence has been presented under 38 C.F.R. § 3.156(a) in order to have a finally denied claim reopened under 38 U.S.C.A. § 5108.

To reopen a claim which has been previously denied and which is final, the claimant

must present new and material evidence. 38 U.S.C.A. § 5108. New evidence means existing evidence not previously submitted to agency decision makers. Material evidence means evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim. 38 C.F.R. § 3.156(a) (2011).

The credibility of the evidence is presumed in determining whether new and material evidence has been submitted. *Justus v. Principi*, 3 Vet. App. 510, 513 (1992). The threshold for determining whether new and material evidence raises a reasonable possibility of substantiating a claim is "low." See *Shade v. Shinseki*, 24 Vet. App. 110 (2010). Moreover, in determining whether this low threshold is met, consideration need not be limited to consideration of whether the newly submitted evidence relates specifically to the reason why the claim was last denied, but instead should ask whether the evidence could reasonably substantiate the claim were the claim to be reopened, either by triggering the VA's duty to assist or through consideration of an alternative theory of entitlement. *Id.* at 118.

The evidence received since the December 2003 rating decision includes further private treatment records and the transcript of the December 2009 Board hearing. Significantly, as discussed above, the Veteran submitted additional evidence in support of his assertion of in-service herbicide exposure, and the Board has accepted that the Veteran was exposed to herbicides during his service in Guam. As noted above, the RO found no evidence of direct exposure to herbicides in its December 2003 rating decision.

The Board concludes that the Veteran's December 2009 testimony, and the supporting evidence submitted, constitutes new and material evidence with respect to the issue of service connection for diabetes mellitus, a liver disorder, blood clots and/or deep vein thrombosis, a lung disorder and a brain disorder. This evidence was not previously of record at the time of the December 2003 rating decision. Further, the Veteran's testimony and supporting evidence is not cumulative of prior records because it provides an indication that the Veteran was directly exposed to an herbicide agent in service. Previously, the record contained no such current evidence. The evidence, presumed credible for the purposes of reopening a previously disallowed claim, is therefore relevant and probative and raises a reasonable possibility of substantiating the claim. The newly received evidence bears substantially upon the specific matters under consideration as it relates to an unestablished fact necessary to substantiate the claims and raise a reasonable possibility of substantiating the claims of service connection. Consequently, the Veteran's claims of entitlement to service connection for diabetes mellitus, a liver disorder, blood clots and/or deep vein thrombosis, a lung disorder and a brain disorder are reopened.

III. Service Connection

Service connection may be established for disability resulting from personal injury suffered or disease contracted in the line of duty in the active military, naval, or air service. 38 U.S.C.A. § 1110; 38 C.F.R. § 3.303. That an injury or disease occurred in service is not enough; there must be chronic disability resulting from that injury or disease. In order to prevail on the issue of service connection there must be competent evidence of a current disability; medical evidence, or in certain circumstances, lay evidence of in-service occurrence or aggravation of a disease or injury; and competent evidence of a nexus between an in-service injury or disease and the current disability. See *Hickson v. West*, 12 Vet. App. 247, 253 (1999); *Jandreau v. Nicholson*, 492 F.3d 1372 (Fed. Cir. 2007); *Buchanan v. Nicholson*, 451 F.3d 1331 (Fed. Cir. 2006).

Service connection may also be established by chronicity and continuity of symptomatology. See 38 C.F.R. § 3.303(b). Continuity of symptomatology may establish service connection if a claimant can demonstrate (1) that a condition was

"noted" during service; (2) there is postservice evidence of the same symptomatology; and (3) there is medical or, in certain circumstances, lay evidence of a nexus between the present disability and the postservice symptomatology. *Barr v. Nicholson*, 21 Vet. App. 303, 307 (2007) (citing *Savage v. Gober*, 10 Vet. App. 488, 495-96 (1997)). "[S]ymptoms, not treatment, are the essence of any evidence of continuity of symptomatology." *Savage*, 10 Vet. App. at 496.

Diabetes Mellitus

Certain diseases associated with exposure to certain herbicide agents, including diabetes mellitus, type II, will be presumed to have been incurred in service even though there is no evidence of that disease during the period of service at issue. 38 U.S.C.A. § 1116(a) (West 2002); 38 C.F.R. §§ 3.307(a)(6), 3.309(e) (2011). However, presumptive service connection due to herbicide exposure is not warranted for the Veteran's type II diabetes mellitus. While type II diabetes mellitus is one of the specific diseases listed in 38 C.F.R. § 3.309(e), the record does not reflect, nor does the Veteran allege, that he served in the Republic of Vietnam during the Vietnam era, or at any other time.

On the other hand, as discussed above, the Board has accepted that the Veteran was exposed to herbicides during his active service in Guam. In addition, service connection for the Veteran's diabetes may be established with proof of actual direct causation. In other words, if there is medical evidence that links the Veteran's diabetes to service, service connection for diabetes may still be warranted.

In this regard, the evidence of record includes a VA addendum report from a VA physician in which her diagnoses include diabetes mellitus, type II, with the notation that the "veteran was officially diagnosed around 1998," and that "[t]his disability has been recognized as associated with exposure to Agent Orange and other herbicides during military service." The Board further notes that the examiner offers no etiology for the veteran's diabetes other than Agent Orange exposure, and there is no opinion of record that contradicts the conclusion of this examiner.

Accordingly, in light of the veteran's credible statements and other evidence supporting his actual exposure to herbicides during service, and the uncontradicted medical opinion that relates the Veteran's type II diabetes mellitus to Agent Orange exposure, the Board finds that service connection for diabetes mellitus, type II, is warranted.

Peripheral Neuropathy

The Veteran contends that he suffers from peripheral neuropathy of the bilateral upper and lower extremities that is proximately due to, or in the alternative has been aggravated beyond its normal progression by, his now service-connected diabetes mellitus.

Service connection may be established on a secondary basis for a disability that is proximately due to or the result of a service-connected disease or injury. 38 C.F.R. § 3.310(a) (2011). Establishing service-connection on a secondary basis requires evidence sufficient to show (1) that a current disability exists and (2) that the current disability was either (a) caused by or (b) aggravated by a service-connected disability. See 38 C.F.R. § 3.310(a); see also *Allen v. Brown*, 7 Vet. App. 439 (1995) (en banc). When aggravation of a Veteran's non-service-connected condition is proximately due to or the result of a service-connected condition, the veteran shall be compensated for the degree of disability over and above the degree of disability existing prior to the aggravation. *Allen*, supra.

Significantly, the Veteran was provided a VA nerves examination in January 2011. Following a review of the claims file and physical examination of the Veteran, the VA examiner rendered diagnoses of peripheral neuropathy of the bilateral upper and lower extremities, each as secondary to diabetes mellitus. The Board again observes that service connection for diabetes mellitus has been awarded above. Therefore, in

light of such evidence, the Board concludes that service connection is warranted for peripheral neuropathy of the bilateral upper and lower extremities as proximately due to a service-connected disability, namely, diabetes mellitus type II. 38 C.F.R. § 3.310; Allen, 7 Vet. App. at 439.

ORDER

New and material evidence having been presented, the claim of entitlement to service connection for diabetes mellitus type II is reopened.

New and material evidence having been presented, the claim of entitlement to service connection for a liver disorder is reopened; to this extent only, the claim is granted.

New and material evidence having been presented, the claim of entitlement to service connection for blood clots and/or deep vein thrombosis is reopened; to this extent only, the claim is granted.

New and material evidence having been presented, the claim of entitlement to service connection for a lung disorder is reopened; to this extent only, the claim is granted.

New and material evidence having been presented, the claim of entitlement to service connection for a brain disorder is reopened; to this extent only, the claim is granted.

-  Service connection for diabetes mellitus type II is granted.
-  Service connection for peripheral neuropathy of the left upper extremity is granted.
-  Service connection for peripheral neuropathy of the right upper extremity is granted.
-  Service connection for peripheral neuropathy of the left lower extremity is granted.
-  Service connection for peripheral neuropathy of the right lower extremity is granted.
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REMAND

As discussed above, the Board has reopened the Veteran's claim of service connection for a liver disorder, blood clots and/or deep vein thrombosis, a lung disorder and a brain disorder. Furthermore, the Veteran asserts service connection is warranted for bilateral hip replacement, or osteonecrosis, a prolapsed trachea, a thyroid condition and a dental condition either as secondary to herbicide exposure or as secondary to now service-connected diabetes mellitus. For the reasons discussed below, the Board finds that additional development, with ensuing delay, is unfortunately required prior to a decision on the merits of these claims.

During the development of the instant claims, the Veteran was provided a number of VA examinations in November 2010 and January 2011. The VA examination reports notes the Veteran's claimed conditions are not due to exposure to Agent Orange, nor are they due to a service-connected disability. However, as discussed above, service connection has now been awarded for diabetes mellitus and peripheral neuropathy of the bilateral upper and lower extremities. The Court has held that once VA undertakes a duty to provide a medical examination, due process requires VA to notify the claimant prior to the adjudication of the claim of any inability to obtain evidence sought (including a VA examination with medical opinion). See Barr v. Nicholson, 21 Vet. App. 303, 311 (2007); see also Daves v. Nicholson, 21 Vet. App. 46, 51 (2007), citing Green v. Derwinski, 1 Vet. App. 121, 123-124 (1991); Bowling v. Principi, 15 Vet. App. 1, 12 (2001) (emphasizing the Board's duty to

return an inadequate examination report "if further evidence or clarification of the evidence... is essential for a proper appellate decision"). As the Board has awarded service connection for diabetes mellitus and peripheral neuropathy, the remainder of the Veteran's claims must be remanded for additional examination.

Accordingly, the case is REMANDED for the following action:

(Please note, this appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c) (2011). Expedited handling is requested.)

1. Schedule the Veteran for the appropriate VA examinations to determine the nature and etiology of the following: a liver disorder, blood clots and/or deep vein thrombosis, a lung disorder, a brain disorder to include hemorrhaging, bilateral osteonecrosis of the hips, a prolapsed trachea, a thyroid condition and a dental condition. The claims file, including this remand, must be made available to the examiner(s) for review. All appropriate tests and studies should be conducted, and any consultations deemed necessary should be accomplished. After reviewing the record and examining the Veteran, the examiner(s) should address the following:

a. Is it at least as likely as not (i.e., probability of 50 percent or greater) that the claimed disability is etiologically related to the Veteran's active military service, to include herbicide exposure? The examiner should specifically comment on the Veteran's assertion that exposure to herbicides left him susceptible to developing the claimed condition.

b. If the answer to (a) is no, is it at least as likely as not (i.e., probability of 50 percent or greater) that the claimed condition is proximately due (caused by) to the Veteran's service-connected disabilities, to include diabetes mellitus type II? The examiner should specifically comment on the Veteran's assertion that his service-connected diabetes mellitus left him susceptible to developing the claimed condition and/or hindered his ability to fully recover from the claimed condition.

c. If the answer to (b) is no, is it at least as likely as not (i.e., probability of 50 percent or greater) that any current lumbar spine disorder has been aggravated beyond its normal progression by the Veteran's service-connected disabilities, to include diabetes mellitus type II? The examiner should specifically comment on the veteran's assertion that his service-connected diabetes mellitus left him susceptible to developing the claimed condition and/or hindered his ability to fully recover from the claimed condition.

The examiner is informed that aggravation is defined for legal purposes as a chronic worsening of the underlying condition versus a temporary flare-up of symptoms, beyond its natural progression. If aggravation is present, the clinician should indicate, to the extent possible, the approximate level of the disorder (i.e., a baseline) before the onset of the aggravation.

The examiner is requested to provide a complete rationale for any opinion expressed, based on the examiner's clinical experience, medical expertise, and established medical principles. If an opinion cannot be made without resort to speculation, the examiner should provide an explanation as to why this is so and note what, if any, additional evidence would permit such an opinion to be made.

2. After completing the above, and any other development deemed necessary, readjudicate the Veteran's claims based on the entirety of the evidence. If the benefits sought on appeal are not granted to the appellant's satisfaction, he and his representative should be provided with a supplemental statement of the case, and an appropriate period of time should be allowed for response.

The appellant has the right to submit additional evidence and argument on the matter or matters the Board has remanded. *Kutscherousky v. West*, 12 Vet. App. 369 (1999).

This claim must be afforded expeditious treatment. The law requires that all claims that are remanded by the Board of Veterans' Appeals or by the United States Court of

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Appeals for Veterans Claims for additional development or other appropriate action must be handled in an expeditious manner. See 38 U.S.C.A. §§ 5109B, 7112 (West Supp. 2011).

Michael J. Skaltsounis
Acting Veterans Law Judge, Board of Veterans' Appeals
Department of Veterans Affairs